

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 697 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI HIRJIBHAI KANANI

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MR SK PATEL for Respondent No. 1,2 and 4

MR DHIRENDRA MEHTA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/09/1999

ORAL JUDGEMENT

1. With much wider grievances and prayers, the petitioners have come up before this court by this special civil application under Article 226 of the Constitution but during the pendency of the special civil application almost all the grievances of the petitioners have been redressed and now only grievance remains re : non-payment of gratuity amount to the petitioners No.1 to

4 and other members of the petitioner No.5 for the services which they rendered to the Government from the date of appointment to the date on which their services were permanently transferred to Rajkot District Milk Producers' Sangh.

2. Initially, defence had been taken by the respondents No.1, 2 and 4 that as the petitioners No.1 to 4 and other members of the petitioner No.5 have opted for C.P.F. scheme they are not entitled for gratuity. In reply to the special civil application, though it is not on the record, admittedly it is filed and copy thereof has been produced by the counsel for the petitioners for the perusal of the court, this defence has been taken that the petitioners No.1 to 4 and other members of the petitioners No.5 are not entitled for the gratuity, now today during the course of arguments, learned counsel for the respondents No.1, 2 and 4 submits that the petitioners No.1 to 4 and other members of the petitioner No.5 are entitled for gratuity. The amount of gratuity has also been determined, which is payable to the persons concerned but the persons concerned themselves are responsible not to take that amount.

3. In view of the statement made by the learned counsel for the respondents No.1, 2 and 4 now it is not required to be decided whether the claim made by the petitioners for gratuity is sustainable or not. It is a claim which has been accepted by the respondents No.1, 2 and 4 and now only the question remains to be decided as to who is responsible for this delay in payment of this amount to the petitioners No.1, 2 and 4 and other members of the petitioner No.5.

4. Learned counsel for the respondents No.1, 2 and 4 submitted that partly the petitioners No.1, 2 and 4 and other members of the petitioner No.5 are responsible for this delay but I do not find any material in support of this contention on the record of this special civil application. Otherwise also in view of the defence with which the respondents No.1, 2 and 4 have come up before this Court i.e. they denied their claim of gratuity, I fail to see any justification in this contention made by the learned counsel for the respondents No.1, 2 and 4. This is nothing but only an unreasonable approach on the part of a welfare State and its officers. It is a case which is falling under the category where the delay is only attributable to the respondents No.1, 2 and 4 not to determine the amount of gratuity payable to the petitioners No.1 to 4 and other members of the petitioner No.5 and not to pay the same to them within reasonable

time and even after filing of this special civil application in this court in the year 1986 they have not cared to determine the amount of gratuity payable to the petitioners No.1, 2 and 4 and other members of the petitioner No.5 and to deposit the said amount in this court.

5. In the result, this special civil application succeeds and the same is allowed and it is hereby declared that the petitioners No.1 to 4 and other members of the petitioner No.5 named in annexure 'A' to the special civil application are entitled for the amount of gratuity as per the provisions of Gratuity Act, 1972 for the period they rendered their services to the Government i.e. from the date of appointment to the date on which permanently they have been absorbed or transferred to the Rajkot District Milk Producers' Sangh. The respondents No. 1 and 2 are directed to determine that amount of gratuity payable to these persons within a period of one month from the date of receipt of writ of this judgment. The amount of gratuity as determined has to be paid to the persons concerned within one month next. These persons are entitled for interest on this amount at the rate of 12 % per annum from the date of their permanent absorption to the Sangh till the date of payment thereof to them. This amount of interest has to be calculated and paid within stipulated period as aforesaid. The amount which is found payable to the concerned persons has to be sent to the Sangh for disbursement/payment thereof to them so that individually they may not come to Gandhinagar for taking this small amount. Rule is made absolute in the aforesaid terms.

6. It is a case where these persons are unnecessarily been dragged into litigation for their just and reasonable claim of their gratuity and other benefits and they have incurred heavy expenses of this litigation. It is a case where the respondent No.1 should be saddled with the costs of this petition in favour of the petitioners. This costs is quantified to Rs.5000/- as what it is stated by the learned counsel for the petitioners that it is a minimum amount which has been incurred as costs by the petitioners in this petition.

zgs/-